IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ICONTROL NETWORKS, INC., a Delaware corporation, Plaintiff, v. ZONOFF, INC., a Delaware corporation, Defendant.	)	CASE NO.: 1:14-cv-01199-GMS **JURY TRIAL DEMANDED**

ICONTROL NETWORKS, INC.'S ANSWERING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

The parties have taken divergent approaches to construing the disputed claim terms from the six Asserted Patents. Plaintiff Icontrol sought to accord the disputed claim terms with reasonable constructions based on the intrinsic evidence. Icontrol also offered compromise proposals, whenever possible, to both minimize the number of disputed claim terms before the Court and to reduce the number of disputed issues per term. As a result, the parties have agreed to construction for several claim terms and have further agreed that other terms do not require any construction. There are now only eleven disputed claim terms at issue.

Zonoff, on the other hand, repeatedly violated relevant legal tenets by proposing claim constructions that fail to consider the teachings of the specifications, import limitations from the specification, exclude preferred embodiments from the scope of the claims, and ignore definitions explicitly set forth in the specification. Zonoff has further alleged that certain claims are indefinite, but failed to adduce any evidence to support its burden of proving indefiniteness by clear and convincing evidence.

These myriad claim construction errors, among others, are a result of Zonoff's attempts to narrow Icontrol's patent rights in order to manufacture non-infringement arguments that are not supported by the plain meaning of the actual claim language. Icontrol, on the other hand, has been mindful of the "goal of claim construction"—that is, "to determine what an ordinary artisan would deem the invention claimed by the patent, taking the claims together with the rest of the specification." *Astrazeneca AB v. Mutual Pharm. Co.,* 384 F.3d 1333, 1337 (Fed. Cir. 2004).

II. CLAIM TERMS IN DISPUTE

A. The '690 Patent

As discussed below, the parties dispute four claim terms found in claim 1 of the '690 patent.

1. **"control unit for receiving signals from a variety of detection devices monitoring events pertaining to security"**

The parties dispute (1) whether this claim term should be treated under 35 U.S.C. § 112, ¶ 6 (means-plus-function) and, (2) if so, which structures are necessary to perform the recited function.

Regarding the first dispute, Zonoff concedes that it bears the burden of establishing that "control unit…" should be treated as a means-plus-function element since the term does not use the word "means." Def. Br.[1] at 4. Despite shouldering this burden, Zonoff fails to submit any supporting evidence. Zonoff instead attempts to rely on *Sarif Biomedical LLC v. Brainlab, Inc.*, C.A. No. 13-846-LPS, 2015 WL 5072085 at *5-*7 (D. Del. Aug. 26, 2015), for the proposition that this Court recently concluded that the term "control unit" in an unrelated biomedical patent should be treated as a means-plus-function element. In sharp contrast to the present case, in *Sarif Biomedical*, the parties agreed that a person of ordinary skill in the art (in the context of medical devices) would understand that a "control unit" would have included "general purpose IBM PC or Apple computers running specialized software." *Id.* (quotations omitted). In other words, the parties in *Sarif Biomedical* parties agreed that "control unit" was a generic computing device, which is quite different than the specialized Alarm Control Unit disclosed and described in the '690 patent.

Zonoff's failure to consider (or address) the intrinsic evidence of the '690 patent is fatal to its attempt to convert "control unit" into a means-plus-function limitation. The Federal Circuit emphasizes that "the specification … is the single best guide to the meaning of a disputed term." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (internal quotations omitted). The

[1] "Def. Br." refers to Defendant Zonoff Inc.'s Opening Claim Construction Brief for U.S. Patent Nos. 7,262,690, 6,624,750, 8,612,591; 8,478,871; 8,638,211 and 8,335,842 (Dkt. 80).

’690 patent specification makes clear to a person of ordinary skill that a “control unit” is a specific special purpose hardware device, not a “nonce” term that mandates treatment under 35 U.S.C. § 112, ¶ 6. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). Zonoff agrees: “***The structure of the control unit that corresponds to this function is laid out in the specification***….” Def. Br. at 5 (emphasis added). The fact that “control unit” is specifically laid-out in the specification confirms that a person of ordinary skill in the art would appreciate that the term connotes definite structure.

Zonoff’s myopic focus on just the term “control unit” is further improper because the surrounding claim language provides additional structural limitations to this disputed term. Claim 1, in fact, recites a “control unit having ***means for transferring information*** … and … having ***control means***.” A17 (’690 Patent) at 18:27-29. In other words, the “control unit” is not a generic computer. It is a specialized hardware device that, *inter alia*, must include, as discussed below, the structure associated with both the “control means” and the “means for transferring.” Because the claim language surrounding “control unit” includes specific structural requirements, Zonoff has failed to meet its burden of establishing that “control unit” should be treated as a mean-plus-function element.

To the extent that the Court construes “control unit” as a means-plus-function limitation, Zonoff’s proposed construction is wrong because it “import[s] … structural limitations from the written description that are unnecessary to perform the claimed function.” *Wenger Mfg., Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1233 (Fed. Cir. 2001). For example, Zonoff provides no explanation for why “a speaker 520,” “user interface controls 506,” “a low power radio transmitter 507,” “a power supply with battery backup 518,” or “resistors, capacitors, and logic elements” are necessary to perform the function of “***receiving*** signals from a variety of detection devices monitoring events pertaining to security." (emphasis added). Indeed, a "transmitter," by definition, transmits signals. A transmitter certainly would not be needed to receive signals.

2. "control means for actively controlling one or more detection devices"

Zonoff falls far short of proving indefiniteness "by clear and convincing evidence." *See Intel Corp. v. VIA Techs., Inc.*, 319 F.3d 1357, 1366 (Fed.Cir.2003). Zonoff provides no evidence that "a person of ordinary skill in the art would be unable to recognize the structure in the specification and associate it with the corresponding function in the claim." *AllVoice Computing PLC v. Nuance Communications, Inc.*, 504 F.3d 1236, 1241 (Fed. Cir. 2007).

Zonoff—through attorney argument—alleges that the '690 patent fails to "specify which portions of the alarm control unit actively control one or more detection devices, and it does not show how such structure is linked to the recited function." Def. Br. at 6. This allegation is incorrect. Claim 1 recites a "control unit … having control means..." which, stated differently, confirms that the "control means" is a component of the "control unit." Zonoff concedes that "[t]he structure of the control unit that corresponds to this function is laid out in the specification." Def.'s Br. at 5. Zonoff further concedes that the "control unit" includes, as a structural component, "a microphone (502) with dual monostable (503) ***to control its operation***." *Id.* at 5 (emphasis added). In other words, the "dual monostable" is the portion of the alarm control unit controls the operation of the detection devices, such as the microphone. The '690 patent further teaches that an "electronic timing switch" may alternatively be used to perform the "control means" function. A16 ('690 Patent) at 16:51-57.

Zonoff next argues that Icontrol's identified structure "would be inadequate to support this means-plus-function term because the specification fails to identify an algorithm to perform the claimed function." Def. Br. at 7. But an "algorithm" is necessary only if the corresponding structure is "a general purpose computer or microprocessor." *See Aristocrat Techs. Austl. Pty*

Ltd. v. Int'l Game Tech., 521 F.3d 1328, 1333 (Fed. Cir. 2008). Here, the corresponding structure includes specific portions of an Alarm Control Unit, including the dual monostable circuit or, alternatively, an electronic timing switch. Since the corresponding structure is not a general purpose computer, it would be improper to construe this claim term to require a specific algorithm.

3. "means for transferring information related to the reception of such signals to a remote monitoring station"

Zonoff again fails to put forth any evidence to meet its burden of proving indefiniteness by clear and convincing evidence. To the contrary, intrinsic evidence shows that the "means for transferring information" limitation is not indefinite.

Claim 1 of the '690 patent recites a "control unit having means for transferring information..." The "means for transferring" is therefore a component of the "control unit." Zonoff concedes that "[t]he structure of the control unit that corresponds to this function is laid out in the specification." Def. Br. at 5. Zonoff further concedes that the "control unit" includes, as a structural component, "a low power radio transmitter (507)." *Id.* at 5. Put differently, the specification makes clear, and Zonoff concedes, that the "lower power radio transmitter" is the structure for performing the "means for transferring information."

The specification also provides a specific example where "[i]f the two sounds match then the generated signals receiving unit sends a signal to the part of the [Alarm Control Unit] adapted to transmit information relating to the generated signals to the [Alarm Monitoring Station], **using the low power radio transmitter** (507)." A17 ('690 Patent) at 17:1-5 (emphasis added). This example states specifically how the low power transmitter is the structure used to transfer information related to the reception of "generated signals" to the remote monitoring.

Because a person of ordinary skill in the art would recognize "the low power radio transmitter" in the specification and would associate this structure with the "means for transferring" function, Zonoff has again failed to meet its burden of proving indefiniteness by clear and convincing evidence.

4. "programmable storage means storing automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal"

Zonoff's proposed construction erroneously "adopt[s] a function different from that explicitly recited in the claim" thereby violating the fundamental tenet governing the determination of function for means-plus-function claim terms. *JVW Enters., Inc. v. Interact Accessories*, 424 F. 3d 1324, 1331 (Fed. Cir. 2005).

The plain language is clear that the function is "storing automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal." That language does not suggest, much less require, the additional function of "identif[ing] events detected by detection devices" or that the "information" must be "determined by the nature of the identified event." Zonoff nevertheless contends that the '690 patent's definition of "Automatic Monitoring Station" "tells a persons of ordinary skill in the art what are the particular 'automatic evaluation routines.'" Def. Br. at 9. The Federal Circuit has, however, cautioned that "it is important not to import into a claim limitations that are not part of the claim." *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). Claim 1 of the '690 Patent is not limited to specific automatic evaluation routines and therefore should not be limited in that manner.

Even if the Court were to adopt Zonoff's proposed function, the Court should still reject Zonoff's proposed structure, as much of it is unnecessary to perform even Zonoff's proposed function. Zonoff no evidence that anything other than the Alert Generation Database is used to perform the function of storing the automatic evaluation routines. Zonoff's attempt to include unnecessary structure should be rejected. *Wenger*, 239 F.3d at 1233.

B. The '591 Patent

With respect to the '591 patent, the parties dispute the construction of a single term which appears in claim 57.

1. "proprietary to the security system"

Icontrol's proposed construction of this term is "used only with the security system" is fully supported by the claim language and specification of the '591 Patent. The claimed invention is designed to integrate into—and complement—existing home security systems. *See* A42 ('591 Patent) at 3:52-4:2.

Zonoff's claim construction brief implicitly concedes that there is nothing in the language or the structure of the claims that requires the Court to adopt its construction of "proprietary to the security system." It is undisputed that Icontrol's construction is fully consistent with the language and structure of the asserted claims.

Zonoff's claim construction argument boils down to its incorrect assertion that the inventors of the '591 Patent defined the term "proprietary to the security system" as having a special definition ("useful only with the security systems of the same vendor") that differs from the plain and ordinary meaning of that term. Zonoff's brief utterly fails to meet its burden of establishing its assertion that there is a special definition of the term "proprietary to the security system." The case law is clear. A claim term is only given a special definition different from the term's plain and ordinary meaning if the "patentee . . . clearly set[s] forth a definition of the disputed claim term other than its plain and ordinary meaning." *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 805 F.3d 1368, 1375 (Fed. Cir. 2015) (citations omitted). Zonoff's argument fails because Zonoff did not—and, indeed, cannot—point to a portion of the specification where the inventors clearly set forth a **definition** for "proprietary" that differs from its plain and ordinary meaning. Rather than suggesting a special definition, Zonoff's quoted passage states that the security system components "operate[] only with" the security system itself. A41-42 ('591 Patent) at 2:25-62; *see also* A41, 42 ('591 Patent) at 1:63-67; 3:52-4:2. The cited passages do not clearly set forth any definitions for this term.

What's more, Zonoff's should be rejected because it contradicts a preferred embodiment in the '591 Patent's specification and injects unhelpful ambiguity into the meaning of the claims. A key objective of this invention is to extend the usefulness of the security system components beyond the original security system: "The security systems of an embodiment, referred to herein as the iControl security system or integrated security system, ***extend the value of traditional home security***…" A42 ('591 Patent) at 4:22-29 (emphasis added). Zonoff's construction prevents the security system components from having any usefulness (or value) beyond the original security system, which contradicts the specification's embodiment.

Zonoff's additional proposed language—"of the same vendor"—is also inappropriate. To begin with, this language is ambiguous and will undoubtedly provoke further claim construction disputes over the meaning of "same vendor." Moreover, the language of Claim 57 does not recite proprietary to a "vendor", but ***to the security system***. The meaning of the claim language is clear: the components are proprietary to the security system if they are used only with the security system. Zonoff suggests no reason why this language is insufficient.

C. The '871 Patent

The parties dispute the proper construction of the term "gateway registry" which appears in Claims 1 and 15 of the '871 patent as well as the phrase "logic that..." which appears in Claim 1.

1. "gateway registry"

Icontrol believes that the language of the claims provide clear explanation for what constitutes a "gateway registry." In light of these claims, the plain and ordinary meaning of the gateway registry is "a server component that maintains records relating to the gateways." This construction is appropriate when the term is read in the context of the surrounding claim language. For example, Claims 1, 15, and 33 (the independent claims) each identify the function that the gateway registry performs. A87-88 ('871 Patent) at 20:59-67; 21:43-47; 22:39-47. Numerous dependent claims also identify structures and functions of the gateway registry. *Id.* at 21:59-67 (Claims 18-20). The specification further discusses many ways in which the gateway registry maintains various records relating to the gateways. A78-79 ('871 Patent) at 2:19-23; 3:6-22; 4:11-33; 4:57-53.[2]

Zonoff's proposed construction is unnecessary in light of the claims. Although Zonoff contends that its construction is consistent with the language of the claims, its proposed construction uses different language than the claims, thus injecting different requirements that will undoubtedly cause confusion and uncertainty for the trier of fact.

Zonoff's argument relies heavily on a passage of the specification that Zonoff contends shows a clear disavowal of scope because the passage is not limited to "certain embodiments." D.I. 80 at 11. As an initial matter, Zonoff fails to accurately describe the passages of the specification it identifies as supporting its construction. Zonoff neglects to mention that the passage it relies upon is directed to just "some embodiments" of the invention, using that particular phrase no less than three times. A80 ('871 Patent) at 5:57 – 6:12. Along those lines, Zonoff's construction requires the gateway registry to store each of three types of data: serial numbers, addresses, ***and*** account information, and further requires that the gateway registry be a "repository." The specification does not treat the gateway registry so narrowly. For example, as discussed Icontrol's Opening Claim Construction brief, the gateway registry stores only a subset of the identified data. D.I. 79 at 15. For instance, claims 18-20, describe the gateway registry includes ***different*** types of records. *See* A88 ('871 Patent) at 21:59-61 (Claim 18 – "serial numbers"); 21:62-64 (Claim 19 – "identifications of a plurality of accounts"); and 21:65-67 (Claim 20 – "address of the server"). The specification also consistently states that the gateway registry may be a repository ***in some embodiments***. A79-80 ('871 Patent) at 4:11-12; 4:14-17; 4:29-30; 5:35-46; 5:57-59. In many embodiments, the claims and specification do not treat the gateway registry as a distinct repository, but as a server component. *See id*. at 5:49-56; *see also* A88-89 ('871 Patent) at Claim 14 (21:31-33); Claim 32 (22:35-36); Claim 40 (23:1-2); and Claim 41 (23:3-4). The specification is clear that the gateway registry might—but **need** not—be a distinct repository, and that many configurations are possible. Accordingly, it is improper to import this limitation from the specification.

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[2] Zonoff's argument misrepresents Icontrol's construction. Icontrol does not maintain that the gateway registry "maintains all records," and this is not Icontrol's proposed construction. Icontrol's position is that the language of the claims is clear, and that to the extent the term "gateway registry" requires construction, it should be construed as "a server component that maintains records relating to the gateways."

Worse still, Zonoff's proposed construction is even more limited than the passages that it cites (and the rest of the specification). Without explanation or justification, Zonoff's construction limits the gateway registry that associates a serial number to a single gateway device and a single gateway server. Zonoff's construction in effect creates a one-to-one-to-one relationship between accounts, gateways, and servers – a concept contradicted by the specification. *See* A79 ('871 Patent at 3:35-39 ("Typically, an account associated with a gateway (for example gateway 206) is located in a single table (for example table 222) on a single server (for example server 216). However, other arrangements are contemplated and described herein."); *See* A83 ('871 Patent at 11:42-43 ("Multiple gateways can also be handled per user account").

2. "logic that sends via the remote network a request to a gateway registry, the request specifying a serial number of the gateway device, receives an address of a gateway server that has an account associated with the gateway device and an identification of the account, sends to the gateway server the identification of the account, and manages the set of local management devices using account information received in response to the identification"

Zonoff contends that this element is a means-plus-function term and that it is indefinite. D.I. 82 at 2. However, Zonoff has not established that this term is means-plus-function for the reasons discussed in Icontrol's Supplemental Opening Brief. *See* D.I. 81 at 1-3. Zonoff has also failed to establish by clear and convincing evidence that this claim element is indefinite. *See Intel*, 319 F.3d at 1366.

Zonoff argues that the element is indefinite because the specification does not disclose logic that "sends to the gateway server the identification of the account, and manages the set of local management devices using account information received in response to the identification." D.I. 82 at 2. Regarding the "sending" aspect of this function, the specification discusses a "Server Updater" which is a component of the "Gateway." *See* A81 ('871 Patent) at Fig. 8. The specification is clear that "[t]he logic of the embodiment shown in FIG. 8 comprises ... server updater 814." *Id.* 8:30-32. The specification then links this structure to the claimed function by stating that "logic that communicates with the server upon which the account associated with the gateway is stored by using the identification and authentication information derived based on the key." *See* A81 ('871 Patent) at 8:54-56.

Regarding the "manages" aspect of the function, the specification expressly states that "[i]n the embodiment shown, gateway device 802 comprises logic 816 for ***managing*** which, for non-limiting example, can include monitoring and controlling, a set of local management devices 838 connected to a local network located at the location." The specification is therefore clear that what Figure 8 shows as the "Devices 816" component of the gateway performs the managing function.[3]

Zonoff next argues that the specification fails to describe ***how*** the logic's structure performs the function of managing the local devices. D.I. 82 at 3. Zonoff applies the incorrect standard. In support of its assertion, Zonoff cites *Blackboard, Inc. v. Desire2Learn Inc*., 574 F. 3d 1371, 1383 (Fed. Cir. 2013). This case, however, determined that the patent-in-suit lacked any structure corresponding to the claimed function. And the Federal Circuit has repeatedly held that "a means-plus-function clause is indefinite if a person of ordinary skill in the art would be unable to recognize the structure in the specification and associate it with the corresponding function in the claim." *All-Voice Computing*, 504 F.3d at 1241. As explained above, Icontrol has identified structure within the '871 patent, which are linked to the claimed function. That is all that is required to satisfy the definiteness requirement. Zonoff fails to establish by clear and convincing evidence that one of ordinary skill in the art would be unable to provide an operative software or hardware program based on the specification's disclosure.

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[3] Zonoff ignores whole swaths of the specification discussing the operations that the gateway device (including, by extension, the gateway device's logic) performs to accomplish device management. See A81-85('871 Patent) at 8:64-67 (discussing storing the settings, software, logs, and hardware for managed devices); 8:67-9:6 (discussing performing management using RF, Z-Wave, or IP); 9:7-14 (describing the steps performed to update the settings of a managed device); 10:46-49 (discussing management using code to summarize various management services); 11:11-22 (performing management via uplink-initiation signal to a network operations server); 13:37-48 (same); 14:43-47 (performing management by receiving data "from different premises management devices"); and 15:6-16:3 (describing automated management using logic that "initiates actions with respect to the local management devices upon certain conditions").

D. The ’842 Patent

The parties dispute the proper construction of 4 terms which appear in the asserted claims of the ’842 patent.[4]

1. “autonomous network”

The claim construction process “begins and ends in all cases with the actual words of the claim.” *Renishow PLC v. Marposs Societa’ Per Azoini*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). This maxim is reflected in the “hierarchy” the Federal Circuit has established wherein courts should analyze the intrinsic record of the patent—the claim language, the specification, and the prosecution history—in determining the proper construction of a disputed claim term. *See, e.g., Hockerson-Halberstadt, Inc. v. Avia Group Int’l, Inc.*, 222 F.3d 951, 955 (Fed. Cir. 2000). “If the meaning of a claim is unambiguous from the intrinsic evidence, then a court may not rely on extrinsic evidence for purposes of claim construction.” *Id.* With these principles in mind, Icontrol proposes that this term be construed as “separate and distinct from other networks of the plurality of networks,” the plain and ordinary meaning of the term. Indeed, this construction is taken verbatim from the text of Claims 1 and 14. See A123 (’842 Patent) at 27:30-38 (claim 1); 28:20-33 (claim 14).

Zonoff’s construction, on the other hand, relies upon unauthenticated extrinsic evidence, the patent’s prosecution history, and a single line from the specification. D.I. 80 at 13-14. For example, contrary to Zonoff’s argument, the specification does not describe **autonomous** networks as “independent.” Rather the specification states that “control networks are independent.” A117 (’842 Patent) at 16:31 (emphasis added). In fact, the specification supports

[4] The parties previously disputed the term “the gateway selectively forming” but have since agreed that no construction is needed for this term. Def. Br. at 14 (“[t]his is not a term that requires construction by the Court.” D.I. 80 at 14.

Icontrol's construction by describing the gateway network as one that is "self-sustaining and autonomous," meaning it can operate on its own, separate and distinct from other networks. A115 ('842 Patent) at 12:10.

Nor does the '842 Patent's prosecution history equate "autonomous" with "independent." While statements made during prosecution of an application may inform a claim term, "because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Phillips*, 415 F.3d at 1317 (Fed. Cir. 2005). Consequently, "we have thus consistently rejected prosecution statements too vague or ambiguous to qualify as a disavowal of claim scope." *Omega Eng'g, Inc, v. Raytek Corp.*, 334 F.3d 1314, 1325 (Fed. Cir. 2003). Here, Zonoff's arguments relating to statements made during prosecution do not clearly and unambiguously effectuate a disavowal of claim scope from the plain meaning of the claims. Indeed, in the portion of the prosecution history Zonoff cites, the Applicants clearly state that "Sutton teaches autonomous devices ***but not autonomous networks separate and distinct from any other network***." A247-248 ('842 File History, 2011-12-12 Applicant Remarks) at 11-12. Rather than disclaiming any claim scope, the applicants used the exact language of the claim. Thus, these statements do not operate any disavowal of scope necessitating a construction different from that provided by the claim language itself. Accordingly, the intrinsic record is consistent that autonomous networks operate "separate and distinct from other networks."

Zonoff's resort to extrinsic evidence is improper because extrinsic evidence is not available where the intrinsic record alone resolves any ambiguity. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). Here, intrinsic evidence—namely the claims—alone resolves the dispute. Claims 1 and 14 describe "an autonomous network that is separate and distinct from any other network of the plurality of networks." A123 ('842 Patent) at 27:30-38 (Claim 1) and 28:20-33 (Claim 14) (emphasis added). The specification also describes a gateway network that is "self-sustaining" and "autonomous" but not independent. A115 ('842 Patent) at 12:10. Based on the plain language of the claims, an "autonomous network" is one that is "separate and distinct from other networks of the plurality of networks."[5] The Court need not consider Zonoff's extrinsic evidence.

2. "associative binding"

Icontrol's proposed construction for this term is "coupling the output of one device (a sensor) to another device (an actuator)." Icontrol's proposed construction is appropriate because, as discussed in Icontrol's Opening Brief (D.I. 79 at 17-18), the inventors acted as their own lexicographer. At Column 18, lines 30 – 33, the specification states:

> Associative Binding
>
> Binding is the process of "connecting" the output of one device (a sensor) to another device (actuator).

Applicants were clearly intending to provide a special definition of this term. Zonoff, however, improperly seeks to supplant this definition with its own, proposing a construction that contradicts the specification of the '842 Patent. Zonoff's argument fails for two reasons.

First, Zonoff concedes that the specification defines "binding" as "the process of 'connecting' the output of one device (a sensor) to another device (actuator)," but inexplicably declines to use this definition as part of its proposed construction. Instead, Zonoff defines

[5] In its Opening Brief, Zonoff cursorily states that "Icontrol's construction is untenable because it impermissibly reads out 'autonomous' from the claim." Zonoff Opening Brief at 14. This statement is absurd. Icontrol's proposed construction is supported by the most reliable form of intrinsic evidence—the claim language itself—which provides the plain and ordinary meaning of "autonomous network."

"associative binding" in part as "a connection mechanism on the gateway that maps source device properties+values to destination device properties+values." In proposing this construction, Zonoff contorts the specification. It is the ***table, not the bindings*** that map source device properties+values to destination device properties+values: "Bindings are kept in a **table** that maps source device properties+values to destination device properties+values." A118 ('842 Patent) at 18:48-51 (emphasis added).

Second, Zonoff's construction contradicts the specification by asserting that "associative binding" does not "contain[] code to do data conversion from the source device's data format to the destination device's data format." The full portion of the specification states:

> Gateway binding can be implemented without associative binding. That ***may***, however, involve the gateway containing code to do the data conversion from the source device's data format to the destination device's data format.

A118 ('842 Patent) at 18:40-43 (emphasis added). Implementing gateway binding without associative binding ***may or may not*** involve the gateway containing code to do the data conversion from the source device's data format to the destination device's data format. Therefore, in some embodiments, the gateway is able to implement gateway binding without associative binding ***and*** without containing code. Adopting Zonoff's construction would exclude this embodiment because it would not be possible to implement the gateway binding both without associative binding and without code to do the data conversion from the source device's data format to the destination device's data format. This would necessarily, under Zonoff's construction, be associative binding. Outcomes that read out embodiments of the specification are "rarely, if ever, correct." *Vitronics*, 90 F.3d at 1583.

Therefore, the Court should adopt Icontrol's construction for the term "associative binding" as a "coupling the output of one device (a sensor) to another device (an actuator)."

3. "an assigned server address"

In support of its construction, Zonoff misapplies the same portion of the '842 Patent's specification that supports Icontrol's construction of the term "an assigned server address." Icontrol's proposal is correct; an assigned server address is an address assigned (1) ***by*** a server (not for a server as Zonoff proposes), (2) to a gateway ***or*** another sever (not solely the gateway as Zonoff proposes), and (3) either prior to ***or*** after the first uplink connection (not only prior to the first uplink connection as Zonoff proposes).

First, an assigned server address is an address assigned *by a server*:

> Gateways ***can contact a common server*** for their first uplink connection ***in order to obtain their assigned gateway server address***, which they can use for all subsequent uplink connections (unless changed later by the system).

A114 ('842 Patent) at 10:64-67 (emphasis added). This section of the specification describes how a gateway contacts another server in order to obtain its assigned gateway server address. Contact is made and an assigned server address is assigned *by a server*.

Second, the '842 Patent distinguishes between "an assigned server address" and "an assigned gateway server address." Turning to the same portion of the specification referenced above, the '842 Patent describes, as one example, the assignment of a *gateway server address*. However, claims 1 and 14 of the '842 Patent are not so limited; these claims discuss "an assigned server address." *See* A123 ('842 Patent) at 27:43-46 (Claim 1) and 28:38-42 (Claim 14). While an assigned server address may be an assigned gateway server address, it is not necessarily so. Zonoff seeks to limit the term to an "assigned gateway server address" without justification.

Icontrol's proposed construction for this term is "an address assigned by a server", a construction supported by the claims and specification. Each use of the term "assigned server address" in the claims and specification describes the assignment of an address by a server. *See* *id.* at 27:43-46 (Claim 1); *see also* A114 ('842 Patent) at 10:64-67. For example, Claim 14 describes how the gateway obtains the assigned server address and uses that assigned server address for all subsequent uplink connections unless the assigned server address is changed. A123 ('842 Patent) at 28:38-42; *see also* 27:43-55 (corresponding operations in Claim 1). Similarly, the specification describes how the gateway will contact a common server for its first uplink connection and obtain an assigned gateway server address used for subsequent uplink connections. A114 ('842 Patent) at 10:64-67. The gateway may receive a new assigned server address after the initial uplink by contacting this common server again. *Id.* at 10:64-11:3.

Third and finally, Zonoff misreads the specification to imply that a server address must be assigned to the gateway ***prior to*** the first uplink connection. This is incorrect because it directly contradicts the claim language. Claims 1 and 14 both expressly state that the assigned server address is used for "all **subsequent** uplink connections". A123 ('842 Patent) at 27:43-46; 28:38-42. The claims do not expressly recite the assigned server address to be used for the first uplink connection and there is no indication that the applicants intended the first uplink connection to be limited in this way. Had the applicants so intended to limit the claims in this way, they could have (but did not) use the word "first" or some other appropriate modifier. Claims 1 and 14 (as well as the specification) also state that the assigned server address can be changed ***after*** the first uplink connection. *See id.*; *see also* A114 ('842 Patent) at 10:67 ("unless changed later by the system"). For these reasons, Icontrol's construction should be adopted.

4. "initiating, by the gateway, all communications with a network operations center server using the assigned server address"

Zonoff incorrectly applies the law of prosecution history estoppel in support of its own construction.

For the prosecution history to surrender claim scope, it "must evince a clear and unmistakable surrender of subject matter." *Conoco, Inc. v. Energy & Envtl. Int'l, L.C.*, 460 F.3d 1349, 1364 (Fed. Cir. 2006) (quotations omitted). Not every statement made during prosecution to distinguish the invention over the prior art creates a separate estoppel – context matters. *Guidant Corp. v. St. Jude Med., Inc.*, 409 F. Supp. 2d 543, 551 (D. Del. 2006); (*quoting Read Corp. v. Portec, Inc.*, 970 F.2d 816, 824 (Fed. Cir. 1992).

During prosecution of the '842 Patent, the Applicants emphasized how statements regarding the gateway initiating all communications with a network operations center ("NOC") server were made *without limitation to the scope of the claim*. For example, Applicants stated in an August 27, 2008, response to an office action:

> [I]t is Applicants' understanding and position that the art of record . . . does not disclose, teach, or suggest the novel and unobvious feature of: the gateway initiating all communications between the server and the gateway. However, ***the Examiner requested that the independent claims be amended for clarification, without changing the scope of the claims***.
>
> . . . [I]n the interest of advancing prosecution, Applicants have amended claim 1 for clarity only ***without changing claim scope as requested by the Examiner*** during the Interview noted above.

A181, A183 ('842 File History, 2008-08-27 Applicant Remarks) at 6 and 8 (emphasis added). Rather than showing an unmistakable surrender of subject matter, these statements show applicants reserving the full scope of the claim.

Zonoff's arguments ignore the context of the Applicants' statements. While technically intrinsic evidence, "because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Phillips*, 415 F.3d at 1317. The Applicants' statements regarding communications between the NOC and the gateway, made during the prosecution of the '842 Patent, were made in the context of an ongoing communication between the examiner and the patentee regarding *uplink communications*. *See e.g.* A183 ('842 File History, 2008-08-27 Applicant Remarks) at 8 ("Applicants claim a method (in Claim 1) for premises management networking, comprising initiating all communications with a network operations server based on . . . an ***uplink-initiation*** signal associated with the network operations center server."); *see also* A218 ('842 File History, 2009-11-11 Applicant Remarks) at 7 and A232 ('842 File History, 2010-06-30 Applicant Remarks) at 7 (discussing how in the prior art "an uplink-initiation signal is not a communication"). Zonoff's construction ignores this context and seeks to introduce an artificially narrow limitation that ***all*** communications between the gateway and the NOC server be initiated by the gateway.

Zonoff's proposed construction also ignores embodiments disclosed in the specification. For example, the '842 Patent specification discusses how "the server can 'call' a gateway if the user requests that a variable change be propagated to a device in real-time (rather than waiting for the next gateway uplink connection on)." *See* A114 ('842 Patent) at 10:29-31. Because the specification provides better guidance than the prosecution history in this instance, it should be given greater weight. *Phillips*, 415 F.3d at 1317.

For these reasons, the Court should construe this term as "when the gateway initiates communications with a network operations center, the gateway does so using the assigned server address."

III. CONCLUSION

For the foregoing reasons, Icontrol requests that the Court adopt Icontrol's proposed constructions.

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